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FISCAL IMPACT STATEMENT

LS 7424

BILL NUMBER: HB 1462

NOTE PREPARED: Feb 26, 2009

BILL AMENDED: Feb 20, 2009

SUBJECT: Criminal History Checks.

FIRST AUTHOR: Rep. Kersey

FIRST SPONSOR: Sen. Lubbers

BILL STATUS: As Passed House

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill exempts a postsecondary educational institution from paying a fee for a limited criminal history record of a student in the institution's school of education before the student begins the student's field or classroom experience. The bill, however, allows the Indiana State Police Department (ISP) to charge a student a fee for responding to a request for the release of a limited criminal history record.

The bill requires a local superintendent to conduct an expanded criminal history background check before employing a potential employee in any position within the school corporation.

The bill also gives qualified immunity for certain school employees for certain acts or omissions during the course of their employment. The bill also adds possession of child pornography to the list of felonies to be reported.

Effective Date: Upon passage; July 1, 2009; January 1, 2010.

Explanation of State Expenditures: *Summary:* The bill would have the following expenditure and administrative impacts:

(1) Expenditures by postsecondary education institutions may decrease to the extent they currently request and pay to obtain the limited criminal history information of incoming students. The extent of the expenditure decrease is indeterminable because the number of requests currently made by institutions for the limited criminal history background information of incoming students is unknown.

(2) The Indiana State Police would experience a change in workload due to: (a) any increase in the limited

criminal history requests made by postsecondary education institutions; (b) any decrease in limited criminal history requests made as a condition of receiving a teaching license; and (c) any increase in requests for national criminal history information from new school employees.

(3) The Department of Education (DOE) would experience a minimal increase in staff workload to operate the database regarding school employees with certain felony convictions and to train school corporations in the proper use of the database. The bill requires the DOE to develop and maintain this database. DOE reported they currently have a data system in place that can track the required information contained in the bill.

Background Information:

Postsecondary Education Institutions Fee Exemption: Phone interviews with selected state universities revealed that the policies regarding payment for criminal background checks in postsecondary education institutions varied, with the cost sometimes paid by the student and sometimes paid by the institution. Actual numbers of criminal background checks by postsecondary institutions was indeterminable because of varying policies and because few institutions kept historical data on the annual number of background checks requested.

Indiana State Police: Exempting postsecondary institutions from fees used to pay for processing requests would require ISP to manage the additional workload within their current level of resources. Additionally, any change in workload that ISP might experience from a decrease in limited criminal history information requests made by teachers applying for licensure may be offset with an increase in the number of national criminal history information requests. Any change in workload will depend on differing processing times required for each type of criminal history request. [Note: ISP reverted \$3.1 M to the General Fund at the end of FY 2008.]

Fingerprint Vendor Selection: The ISP reports that an applicant fingerprint vendor has recently been selected and that the final price for the fingerprint transaction has yet to be finalized. This contract will allow the Records Division of the ISP to receive applicant fingerprint cards electronically and will result in more efficient operations in the Records Division by decreasing workload and increasing response time for requested background checks. The selection of a fingerprint vendor may influence revenue to the General Fund, as well as the workload of the ISP under the bill. Actual impact on workload and revenue is indeterminable as information regarding the vending contract is not currently available.

Criminal History Checks: A name-based limited criminal history check is defined as a criminal history check that searches within the state any criminal activity associated with a person's legal name(s). This check must include (1) a disposition and (2) a photograph of the person who is the subject of the limited criminal history, if a photograph is available. The term includes information about any arrest or criminal charge that occurred less than one year before the date of a request even if no disposition has been entered. A limited criminal history background check is obtained through the ISP.

The bill defines that an expanded name-based criminal history check includes a national criminal history background check and either (1) a search of the sex offender registries of all 50 states or (2) a search of the National Sex Offender Registry maintained by the U.S. Department of Justice. The bill also allows an online search of either the sex offender registries of all 50 states or the National Sex Offender Registry to satisfy the requirements for an expanded criminal history background check.

A national criminal history background check is defined as a fingerprint-based check that uses the Federal Bureau of Investigation's (FBI) Automated Fingerprint Identification System (AFIS) to match an applicant's fingerprints to any crimes committed by that applicant nationally or any other method of positive identification. A national criminal history background check does not provide a search of the National Sex Offender Registry or the sex offender registries maintained by the 50 states. A national criminal history background check is also obtained through the ISP.

A criminal history check review challenge occurs when an applicant who received a name-based limited criminal history check challenges the results by submitting to a fingerprint-based criminal background check performed by the ISP.

Explanation of State Revenues: *Summary:* The bill is expected to result in a net decrease in state revenue of approximately \$124,000 in FY 2010 and \$129,000 in FY 2011. Of these amounts, the net reduction in General Fund revenue is about \$33,000 for FY 2010 and \$35,000 for FY 2011. The impact on state revenues is due to the following provisions:

(1) The bill eliminates the requirement in current law that applicants for a teaching license submit limited criminal history information. The resulting *decrease* in revenue to the General Fund and the Indiana Office of Technology Portal Fund is expected to be approximately \$182,240 for FY 2010 and \$187,000 for FY 2011.

(2) The bill also requires all individuals seeking employment with a school corporation to obtain a national criminal background check as well as a search of the National Sex Offender Registry or the sex offender registries of all 50 states. Revenue to the General Fund will increase to the extent that new school employees obtain national criminal history background checks. This will result in an estimated *additional* \$57,800 of revenue to be deposited in the General Fund each year.

Background Information:

A breakdown detailing the loss of revenue per year from limited criminal history background checks is presented in Table A below. Information on national criminal history background check fees is included in Table B below. In FY 2007, ISP reports that criminal background checks generated \$2.3 M in revenue for the General Fund.

Table A. Decreases in Limited Criminal History Requests and Revenue.

	Total Requests	General Fund	IOT Portal Fund
FY 2010	13,000	\$91,000	\$91,240
FY 2011	13,360	\$93,250	\$93,766
Total	26,360	\$184,250	\$185,006

Under the bill, applicants for initial practitioner's licensing will be required to have an expanded criminal history background check conducted by their employing local school superintendent as a condition of licensure. Currently, applicants for initial practitioner's licensing must obtain limited criminal history information. It is assumed that the number of initial practitioner license holders are new teachers with no years of experience.

The Department of Education (DOE) reports there were approximately 74,000 licensed teachers in the state during academic year 2007-2008, of which, approximately 3,368 were new teachers. During the same academic year, DOE reported there were a total of 10,676 administrators and other noncertified public school employees, of which it was estimated that 486 individuals were new employees. To estimate the increase in revenue from national criminal history information, the population of new teachers (3,368) and estimated new, non-certified employees (486) were used to calculate potential requests made by new school employees for national criminal history background checks.

Limitations of New School Employee Estimate: This estimate (1) may not reflect precisely the number of noncertificated employees and administrators in public schools, (2) does not include an estimate for noncertificated employees and administrators of private schools, and (3) does not include teachers and noncertificated employees who transfer between schools, who all would be subject to the criminal history requirements contained in the bill.

Teachers can obtain three different teaching licenses; one that must be renewed every 2 years, one that must be renewed every 5 years, and one that must be renewed every 10 years. Using information regarding teacher's years of experience, it was assumed that all teachers with 0 or 1 year of experience would apply for only the 2-year licensure, teachers with 2 years of experience would apply for 5-year licensure, and teachers with 7 years of experience or any year of experience ending with 7 would apply for 10-year licensure. Assuming there is no teacher attrition in the state, a total of 13,000 licensure applications are expected to be received in FY 2010 and 13,360 licensure applications are expected to be received in FY 2011.

Table B: Local School Criminal Background Check, Current Law and As Proposed.		
	Current Law	As Proposed
Type of Check and Requirement	All licensure applicants are required to submit at least a limited criminal history check. However, depending on school corporation or charter school policy, <u>may</u> be required to submit a national criminal history check for new hires.	Licensure applicants would no longer be required to submit criminal history information as a condition of licensure. Would be required to collect national criminal history check and have a search performed of either (1) the National Sex Offender Registry or (2) the sex offender registries for all 50 states, for all individuals applying for employment with a school corporation.
Fee	<u>Limited:</u> \$16.32 for persons who do not subscribe to AccessIndiana, \$15 for AccessIndiana subscribers, and \$7 by mail; fee is waived for school corporations; or <u>National:</u> \$32.25, \$15 of which is deposited into the state General Fund, \$17.25 is forwarded to the federal government.	National criminal history check: \$32.25, \$15 of which is deposited into the state General Fund, \$17.25 is forwarded to the federal government. The fees to complete a search of the sex offender registries in all 50 states or the National Sex Offender Registry are not known. However, no revenue would be forwarded to state/local governments.

Postsecondary Schools of Education Fee Exemption: The bill exempts a postsecondary educational institution from paying a fee for a limited criminal history record of a student in the institution's school of education before the student begins the student's field or classroom experience. However, the bill also allows

ISP to charge the student. To the extent a postsecondary education institution currently obtains a name-based limited criminal history check for the purposes of the bill and the ISP were to not charge the student, the state would experience a decrease in revenue to the state General Fund and the IOT Portal Fund. Actual decreases would depend on the number of requested name-based limited criminal history checks by the school, the method in which the checks were obtained, and the fee policy of the ISP. Postsecondary education institutions will experience a decrease in expenditures only to the degree they were paying for criminal background checks for students prior to this bill.

Modification of Criminal History Check Policy: Fees vary for limited criminal history background checks and depend on the method in which the information is obtained. Revenue from fees collected is deposited into the state General Fund and the IOT Portal Fund. Currently, individuals challenge the results of a name-based criminal background check by requesting a fingerprint-based review challenge. Fees are assessed for a review challenge and these fees are deposited in the General Fund. Any change in revenue would depend on the number of persons currently requesting a review challenge (for which the state would experience a decrease of \$10 per review challenge) and the number of people who would, under the bill, obtain a name-based expanded criminal history check (for which the state would experience no increase in revenue) and then subsequently obtain a review challenge (for which the state would experience an increase in revenue of \$10 per review challenge).

Explanation of Local Expenditures: Under the bill, a local school superintendent is required to conduct an expanded criminal history check for all new employees in a school corporation. The bill is silent on who bears financial responsibility to obtain the required expanded criminal history information. If the schools finance the requests for all new employees (an estimated 3,300 new teachers and 486 noncertified employees), the increase in school expenditures is estimated to be approximately \$124,000 per year.

Explanation of Local Revenues:

State Agencies Affected: ISP; DOE; IOT; Postsecondary schools of education.

Local Agencies Affected: Local school corporations and townships; Charter schools

Information Sources: Major Doug Shelton, ISP, (317) 232-8265; Indiana Department of Education Databases; ISP Record Division, ISP Website (www.in.gov/isp); Dean Mark Ferguson, Vincennes University, (812) 888-4301; Kathy Herald, Ball State University College of Nursing, (765) 285-1834; Tom Warner, Ball State University Associate Vice President for Business Affairs, (765) 285-1133; Cindy Wise, Indiana University, (812) 855-9845; Cathy Sleeth, Purdue University (765) 494-5927; Debbie Hineline, Indiana Department of Education, (317) 232-0840; Neil Ruddock, Indiana Department of Education, (317) 232-6671; <http://www.instantcriminalchecks.com>.

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